IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 8744 of 2005

Date of Decision : 30th August, 2007

Balbir Singh and others. .... Petitioners

Versus

The Malwa Gramin Bank and others. ... Respondents

C.W.P. No. 16090 of 2005

Gurjit Singh .... Petitioner

Versus

The Malwa Gramin Bank and others. ... Respondents

CORAM : HON'BLE MR. JUSTICE S.D. ANAND.

Present : Mr. Gurdip Singh, Mr. H.R. Nohria and
Mr. Chandeep Singh, Advocates,
for the petitioners.

Mr. Govind Goel, Mr. Brijeshwar Kanwar and
Mr. Deepak Garg, Advocates,
for the respondents.

S.D. Anand, J.

On a conjunctive perusal of the pleadings of the parties, it is apparent and it is also conceded that the controversy between the parties in these writ petitions is with regard to the interpretation of the seniority-cum-merit rule.

The petitioners are concededly senior to the private respondents, though it is the latter who came to be promoted in preference to the former on the basis of higher merit.

Indicating his interpretive endeavour, the learned counsel for

the petitioners argued that given the minimum merit, the rule of seniority has to prevail and a junior employee cannot steal a march over a senior employee just because the former may have exhibited little more merit at the relevant tests etc. Reliance, in support of the advocated view, was placed upon B.V. Sivaiah and others versus K. Addanki Babu and others (AIR 1998 Supreme Court, 2565), Harigovind Yadav versus Rewa Sidhi Gramin Bank and others (2006 AIR SCW 2822) and also Bhagwandas Tiwari and others versus Dewas Shajapur Kshetriya Gramin Bank and others (JT 2006 (10) SC 258).

Contesting the plea aforementioned, the learned counsel for the respondents relied upon K. Samantaray versus National Insurance Company Ltd. (JT 2003 (Suppl.1) SC 400 in support of the argument that the provision for laying down the promotion policy enables the employer to specify area and parameter of weightage to be given in respect of merit and seniority separately. It was further argued that it is permissible for an employer to have its own criteria for adjudging claims on the principle of seniority-cum-merit, giving primacy to merit as well depending upon class, category and nature of posts in the hierarchy of administration and the requirements of efficiency for such posts.

Before embarking upon adjudicating exercise to decide the merits, it would be appropriate to notice the relevant provisions.

The appointments and promotions of the employees employed in the Rural Banks are governed by the Regional Rural Banks (Appointment and Promotion of Officers and other Employees), Rules, 1998. The appointments to the scale-I posts are to be made by direct recruitment through Bank Service Recruitment Board and promotion in the ratio of

50:50. The promotions to a scale-I posts (Group `A') are to be made on the basis of seniority-cum-merit. In the case of promotion, the selection of the candidates is to be made by the Committee (consisting of the Chairman of the concerned Regional Rural Bank, a Director nominated by the Sponsor Bank and a Director nominated by the National Bank). The first named would be chair the Committee; while the other two would be the members of the Committee. The selection for promotion is to be made on the basis of performance in the written test (70 marks), interview (20 marks) and five years performance appraisal (10 marks). It is further noticed in the Rules that "a list of only those candidates who secure a minimum of 40% marks each in English, Banking Law, practice and procedures shall be prepared. The Bank, thereafter, shall prepare the list of selected candidates in the order of seniority to the extent of two hundred percent of the vacancies for promotion for the purpose of calling for interview." It is further provided that there shall be no minimum qualifying marks in the interview.

Insofar as the promotions to the Group `B' are concerned, 90% appointments are to be made by direct recruitment and the remaining 10% by promotion on the basis of seniority-cum-merit. In a case of promoted candidates, the selection is to be made by a Committee (consisting of the Chairman of the concerned Regional Rural Bank, two senior most officers of the concerned Regional Rural Bank and a Director nominated by the National Bank) on the basis of a written test (80 marks) and interview (20 marks). There also, it is indicated that there shall be no minimum qualifying marks in the interview.

For facility of reference, it may be noticed that in C.W.P. No. 16090 of 2005, the petitioner is seeking appointment, by promotion, to

Group `B' posts; while the petitioners in CWP No. 8744 of 2005 are seeking appointment, by promotion, to Scale-I posts. In the former Civil Writ Petition, the petitioner is presently holding the post of Full Time Regular Messenger; while in the latter case, the petitioners are holding the post of Clerks-cum-Cashiers.

I have given my careful thought to the point under reference.

The criterion of `Seniority-cum-Merit', in the matter of promotion, envisions that given the minimum necessary merit requisite for efficiency of assessment, the senior (even though less meritorious) shall have priority and a comparative assessment of merit is not required to be made. For purposes of assessing the minimum necessary merit, the Competent Authority may lay down the minimum standard that is required. It may also prescribe the mode of assessment of merit of the eligible employee. The methodology of such assessment could be by means of assigning marks on the basis of service record and interview. It could very well prescribe the minimum marks which would entitle an employee to be promoted on the basis of Seniority-cum-Merit. However, that methodology can be adopted by the Competent Authority with a view to only assess the minimum necessary merit. If a senior displays the minimum necessary merit, he shall be entitled to earn promotion on the basis of seniority, even though his junior may have been otherwise found to be more meritorious. The situation would be entirely different in the case of merit-cum-seniority. In that eventuality, the merit shall out-weigh seniority.

The plea raised on behalf of the respondents that the provision for assessment of respective merit of the eligible candidate inter-se is permissible and that the merit so assessed may even out-weigh seniority is

misconceived and so also is reliance placed in the context upon K. Samantaray's case (supra). In that case, the employer formulated promotion policy only in the year 1990. That policy specified that promotion would be made on the basis of seniority-cum-merit. That policy further specified that 42 per cent marks would be awarded for seniority. Prior to the formulation of that policy the promotions were governed only by certain guidelines. In that case, the appellant was denied promotion since he was not found suitable. A writ plea preferred by him was declined by the High Court. The Apex Court dismissed the plea by holding that "it is always open to the employer to specify area and parameter of weightage to be given in respect of merit and seniority separately so long as the policy is not colourable exercise of power. It is permissible for the respondent to have its own criteria for adjudging claims on the principle of seniority-cum-merit giving primacy to merit as well depending upon class, category and nature of posts in the hierarchy of administration and the requirements of efficiency for such posts. No fault could therefore be found with the policy of the respondent which gave weightage to merit also besides taking into account the seniority." In that case, the following relevant observations were made by the Apex Court:-

> "11. While laying down the promotion policy or rule; it is always open to the employer to specify area and parameter of weightage to be given in respect of merit and seniority separately so long as policy is not colourable exercise of power, or has the effect of violating of any statutorily scope of interference and other relatable. The decision in B.V. Sivaiah case (supra) is clearly distinguishable on facts and in law. That

was a case where statutory rules governed the field. This Court, inter alia, held that fixing terms which are at variance with the statutory rules is impermissible. In the case at hand, prior to the formulation of policy in February, 1990, there were no codified prescriptions. It was the stand of the respondent-employer that prior to the formulation of the policy, certain guidelines existed and the objectives of the policy were to rationalize and codify the existing guidelines relating to promotions within officers cadre. There is no statutory rule operating. It is for the employer to stipulate the criteria for promotion, the same pertaining really to the area of policy making. It was, therefore, permissible for the respondent to have their own criteria for adjudging claims on the principle of seniority-cum-merit giving primacy to merit as well depending upon the class, category and nature of posts in the hierarchy of administration and the requirements of efficiency for such posts.

12. Reading of the whole policy reveals that stress was not on seniority alone and weightage was sought to be imposed on merit and other relevant aspects also. In view of this conclusion it is not necessary to go into the question of fence-sitting stand adopted by the appellant and non-impletion of affected persons. There is no scope for interference in this appeal."

That ruling rendered by the two Judges' Bench of the Apex Court does not, thus, advance the interest of the respondents because it was found as a fact that "stress was not on seniority alone and weightage was

sought to be imposed on merit and other relevant aspects also. In view of this conclusion it is not necessary to go into the question of fence-sitting stand adopted by the appellant and non-impletion of affected persons. There is no scope for interference in this appeal."

The law on the subject was authoritatively laid down by the three Judges' Bench of the Apex Court in B.V. Sivaiah's case (supra) by recording the following observations:-

> "The criterion of `seniority-cum-merit' in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit."

That enunciation of law was reiterated by the Apex Court in Bhagwandas Tiwari's case (supra) and Harigovind Yadav's case (supra).

As already noticed, it is beyond the pale of controversy that the petitioners are placed higher in seniority qua the private respondents. The private respondents came to be promoted on assessment of higher merit. The petitioners did not fail the standard of minimum standard of eligibility.

In the light thereof, the principle of seniority-cum-merit would ordain in favour of the claim put-forth by the petitioners. Both the writ petitions filed by the petitioners shall stand allowed. The impugned order dated 24.09.2005 (Annexure P/4) in C.W.P. No. 16090 of 2005 shall stand quashed. Respondent Nos. 1 and 2 are mandated to promote the petitioner from the post of Full Time Regular Messenger to Clerical Cadre w.e.f. the very date the private respondents were ordered to be promoted.

Insofar as the C.W.P. No. 8744 of 2005 is concerned, the impugned order dated 08.07.2004 (Annexure P/1) shall stand quashed to the extent it relates to respondent Nos. 2 to 7. Respondent No.1 is mandated to promote the petitioners from the post of Clerks-cum-Cashiers to Officers Scale-I w.e.f. the very date the private respondents were ordered to be promoted.

The petitioners shall also be entitled to the costs of the cause in the circumstances of the case, which are assessed at Rs. 5500/-.

August 30, 2007 (S.D. Anand)
vkd Judge

Note: Whether referred to reporter or not : Yes/No.